

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

11 Cr. 1032 (PAE)

5 LEONIDES SIERRA, et al.,

6 Defendants.
7 -----x

8
9 New York, N.Y.
November 1, 2013
2:19 p.m.

10
11 Before:

12 HON. PAUL A. ENGELMAYER,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 NOLA HELLER

JESSICA ORTIZ

18 Assistant United States Attorneys

19 GREGORY E. COOPER

RICHARD JASPER

20 Attorneys for Defendant Carlos Urena

21 IRVING COHEN

CARL HERMAN

22 Attorneys for Defendant Felix Lopez-Cabrera

23 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

Attorneys for Defendant Javier Beltran

24 JEREMY SCHNEIDER
25

1 APPEARANCES (Continued)

2 COLSON & HARRIS LLP

3 Attorneys for Defendant Miguel Delance

4 DEBORAH COLSON

5 KRISTEN SANTILLO

6 MOSKOWITZ & BOOK, LLP

7 Attorneys for Defendant Michael Cabrera

8 AVI MOSKOWITZ

9 SUSAN MARCUS

10 JAMES E. NEUMAN

11 Attorney for Defendant Julian Lopez

12 BOBBI C. STERNHEIM

13 CHRISTOPHER ADAMS

14 Attorney for Defendant Raymond Sosa

15 GRAINNE O'NEILL

16 ROBERT QUACKENBUSH

17 Attorneys for Defendant Andry Lazala

18 LLOYD EPSTEIN

19 Attorney for Defendant Anderson Abreu

20 SUSAN KELLMAN

21 MARY L. BEJARANO

22 COLLEEN BRADY

23 Attorneys for Defendant Carlos Lopez

24 KARAHNI NKRUMAN

25 Attorney for Defendant Miguel Strong

DAVID GLAZER

JAMES SAYLOR

Attorney for Defendant Limet Fasquez

RUSSELL T. NEUFELD

Attorney for Defendant Lizardi

EDWARD WILFORD

ALEXANDRA ^TSEITLIN

Attorney for Defendant Maria Mejia

DAVID GREENFIELD

JULIE BRAIN

Attorneys for Defendant Silverio

1 ALSO PRESENT:

2 EMMA M. GREENWOOD
3 Coordinating Attorney

4 CRISTINA WEISZ, Spanish interpreter
5 PAULA GOLD, Spanish interpreter

1 (In open court)

2 THE DEPUTY CLERK: United States against Leonides
3 Sierra, et al., (S5)11 Cr. 1032.

4 Government ready?

5 MS. HELLER: Yes, good afternoon, your Honor. Nola
6 Heller and Jessica Ortiz for the United States.

7 THE COURT: Great. Good afternoon, Ms. Heller and
8 Ms. Ortiz.

9 Can everyone hear me?

10 UNIDENTIFIED SPEAKER: No.

11 THE DEPUTY CLERK: Marshals, can you shut that back
12 door? Thank you?

13 THE COURT: Does that help? Can people hear me now?

14 THE DEPUTY CLERK: For defendant Carlos Urena.

15 MR. COOPER: Good afternoon, your Honor. Greg Cooper
16 on behalf of Mr. Urena. Mr. Urena sits in the second row.
17 He's raising his hands. Your Honor, Mr. Jasper could not be
18 here today. He has a doctor's appointment.

19 THE COURT: Very good. Thank you.

20 THE DEPUTY CLERK: For defendant Carlos Lopez.

21 MS. KELLMAN: Good morning, your Honor. Susan
22 Kellman. My client is standing at the moment. I'm assisted
23 today by Colleen Brady, who is behind me. And, also, by Mary
24 Bejarano, who is with the Southern District Mentoring Program.

25 THE COURT: Good afternoon.

1 THE DEPUTY CLERK: For defendant Miguel Strong.

2 MR. NKRUMAH: Good afternoon, your Honor. Karahni
3 Nkrumah. Mr. Miguel Strong is standing in the first row right
4 there. Mr. ^Draytel isn't able to make it today, your Honor.
5 He's out of town.

6 THE DEPUTY CLERK: For defendant Limet Vasquez.

7 MR. GLAZER: Good afternoon, your Honor. David Glazer
8 appearing on behalf of Mr. Vasquez, who is seated on the left
9 in the middle row, Judge. Also today with me, Judge, is James
10 Saylor, Judge, from Mr. Buchwald's office.

11 THE DEPUTY CLERK: For defendant Ramon Lizardi.

12 MR. NEUFELD: Good afternoon, your Honor. Russell
13 Neufeld for Mr. Lizardi. Co-counsel is not here. Mr. Lizardi
14 is sitting in the first row, first seat.

15 THE DEPUTY CLERK: For defendant Maria Mejia.

16 MR. WILFORD: Good afternoon, your Honor. Edward
17 Wilford appearing for Ms. Mejia. She's seated in the last row
18 by the window. And also appearing with me is Ms. Alexandra
19 ^Tseitlin from the Southern District Mentoring Program.

20 THE DEPUTY CLERK: For defendant Yandel Silverio.

21 MR. GREENFIELD: David Greenfield and Julie Brain for
22 Mr. Silverio. He's in the second row, second seat from my
23 right, looking in.

24 THE DEPUTY CLERK: For defendant Felix Lopez-Cabrera.

25 MR. COHEN: Good morning, your Honor. Irving Cohen

1 and Carl Herman, appearing on behalf of Mr. Felix
2 Lopez-Cabrera. He's seated in the second row at the end.

3 THE DEPUTY CLERK: For defendant Javier Beltran.

4 MR. SCHNEIDER: Good afternoon, your Honor. Jeremy
5 Schneider. Mr. Beltran is in the first row, furthest from you.
6 And my co-counsel couldn't be here today.

7 THE DEPUTY CLERK: For defendant Juan Franco.

8 MR. COHN: Good afternoon, your Honor. Fred Cohn for
9 Mr. Franco. With me is Angela ^Lipscom, my associate.
10 Mr. Franco is the third person from the left in the first row.

11 THE COURT: Very good. Thank you.

12 THE DEPUTY CLERK: For defendant Miguel Delance.

13 MS. COLSON: Deborah Colson for Mr. Delance. He's in
14 the top row in the right. And with me is Ms. Santillo.

15 THE COURT: Thank you. Good afternoon to all of you.

16 THE DEPUTY CLERK: For defendant Michael Cabrera.

17 MS. MOSKOWITZ: Good afternoon, your Honor. Avi
18 Moskowitz and Susan Marcus for Mr. Cabrera, who is in the
19 middle of the first row.

20 THE DEPUTY CLERK: For defendant Julian Lopez.

21 MR. NEUMAN: Good afternoon. James Neuman for Mr.
22 Lopez. He's in the second row, third in

23 THE COURT: Good afternoon.

24 THE DEPUTY CLERK: For defendant Andry Lazala.

25 MS. O'NEILL: Good afternoon, your Honor. My name is

1 Grainne O'Neill. I'm here for Mr. Lazala. He's in the third
2 row.

3 THE DEPUTY CLERK: From the defendant Anderson Abreu.

4 MR. EPSTEIN: Good afternoon, your Honor. Lloyd
5 Epstein for Mr. Abreu. He's in the front row.

6 THE DEPUTY CLERK: For defendant Raymond Sosa.

7 MS. STERNHEIM: Good afternoon, your Honor. Bobbi
8 Sternheim and Chris Adams for Raymond Sosa, who is in the
9 second row.

10 THE DEPUTY CLERK: And discovery counsel.

11 MS. GREENWOOD: Good afternoon, your Honor. Emma
12 Greenwood for defense counsel. And with me is ^Yasnica
13 Mothersil, a legal assistant.

14 THE COURT: Good afternoon.

15 Okay. Please let me know if you can't hear what I'm
16 saying. I'm mindful the acoustics are challenging.

17 This is the first of two conferences in this case that
18 the Court will hold today. The second one will be at 3:30 p.m.
19 These conferences are for the defendants who have previously
20 been identified as the so-called murder defendants. As has
21 been my usual practice, I'm going to reserve judgment on any
22 decisions of consequence until after both of these conferences.
23 That is to ensure that the defendants at the 3:30 p.m.
24 conference are not disadvantaged by going second.

25 Let me begin by reviewing the agenda that I have for

1 today. First I'm going to review -- really for the benefit of
2 the defendants, most of all -- the developments in this case
3 since our last conferences in July.

4 Second I will call on the government and our discovery
5 coordinating counsel, Ms. Greenwood, for an update on discovery
6 issues and open the floor for any issues relating to the
7 provision of or access to Rule 16 discovery.

8 Third, I'm going to call upon the government and
9 defense to update me on the status of the capital review
10 process and the submission of mitigation submissions in this
11 case.

12 Fourth, I will turn to what I regard as the most
13 important issues to cover today, which involve setting trial
14 dates for the murder defendants and the proper configurations
15 of defendants to be tried.

16 I also in that vein intend to solicit views on the
17 practices that the Court should hold for future conferences in
18 this case once the case has been broken up into separate trial
19 groups. And I intend today to set a conference date soon for
20 the group of three defendants as to whom I've already set a
21 trial date of March 10th.

22 Next, I want to say just a few words about two pending
23 motions in the case, one filed by defendant Ramon Lizardi and
24 the other by defendant Miguel Delance. I will then, as I
25 always do, open the floor to other topics that counsel wish to

1 raise, but limit it to topics of relevance to this group.

2 As you know, I'm quite happy to hear issues or
3 concerns of particular relevance to an individual defendant
4 whether relating to defendant specific discovery issues, bail
5 applications, representation issues, or whatnot, but those are
6 properly taken up at individual conferences, not in front of
7 the large group.

8 Finally, at the end I need to make sure we set another
9 conference date and we'll entertain an application for the
10 exclusion of time.

11 So turning, first, to developments since the July
12 conferences, which were held on July 9th and July 12th, just by
13 way of update-- and, again, this is really for the benefit of
14 defendants who I'm mindful do not have access to ECF.

15 As to the Group A defendants who, as you'll recall,
16 were scheduled for trial on January 7th and all of whom pled
17 guilty, at this point I believe that all but one of them has
18 been sentenced.

19 As to the first group of Group B nonmurder defendants,
20 the ones who had been charged in the original indictment
21 brought in December of 2011, they had all been scheduled for
22 trial in early June, and each of them pled guilty. As of
23 today, all but two of them have been sentenced.

24 Finally, as of the last conference, there was a trial
25 scheduled for this second group of Group B nonmurder

1 defendants. These were the ones who were first charged in the
2 superseding indictment returned in December 2012. Each of
3 those cases was also resolved without trial. They had been
4 scheduled to go to trial beginning on this past September 16th.
5 I have not yet had occasion to sentence any of those
6 defendants, but the sentencing hearings for them are scheduled
7 shortly.

8 Thus, the only remaining defendants who have been
9 apprehended in this case and who have unresolved issues of
10 guilt or innocence are the murder defendants.

11 In another development since the July conferences, on
12 September 10th I issued a decision on a discovery dispute made
13 by defendant Carlos Urena. The issue had to do with, first,
14 whether a particular tape of a 9-1-1 call relating to the
15 murder of Ka'Shawn Phillips constituted Rule 16 material as
16 opposed to Jencks Act material.

17 I held that it was Rule 16 material and, therefore,
18 subject to pretrial discovery under the terms of Rule 16.
19 However, as to the second point in dispute, I upheld the
20 government's decision to redact from that tape identifying
21 information as to that caller.

22 Now, I authorized Mr. Urena to seek again that
23 information in nonredacted form upon an appropriate showing. I
24 understand from a later letter I have received from Gregory
25 Cooper, counsel for Mr. Urena, that a renewed application may

1 in the future be made on this issue. That is fine.

2 Mr. Cooper, if you intend to make such a renewed
3 motion-- where are you?

4 MR. COOPER: I'm over here, Judge.

5 THE COURT: There you are. Thank you. If you intend
6 to make such a renewed motion, I'll take up the typing of that
7 motion for the group of defendants that are scheduled to go to
8 trial on March 10th.

9 The final development to report involves my having set
10 the March 10 trial date for three defendants. As counsel and
11 the defendants will recall, at the conferences in July, the
12 three defendants charged in connection with the Ka'Shawn
13 Phillips murder -- which is to say, Carlos Urena, Juan Franco
14 and Limet Vasquez -- all requested that a trial date be set for
15 them. At the time, however, the capital review process had not
16 yet been completed as to those three defendants.

17 I have since been notified by the government that the
18 Department of Justice has not decided to pursue the death
19 penalty as to those three defendants. Accordingly, after
20 soliciting the views of the government and of defense counsel
21 as to a trial date, I've set down the trial of those three
22 defendants to begin on Monday, March 10, 2014.

23 The government has estimated that that trial will last
24 three to four weeks approximately. I've set a schedule for
25 pretrial motions in that case under which initial defense

1 motions are due November 22nd. I will take up the issue of
2 scheduling trials for the other defendants, as I said, later in
3 this conference.

4 Now, that leads me then to an update on discovery
5 issues. Turning first to the government, I'd welcome a report
6 on any new Rule 16 discovery that has come in or been provided
7 to the defense since the July conferences, if any, and any
8 issues that you're aware of that have arisen with regard to
9 accessing Rule 16 discovery.

10 MS. HELLER: Your Honor, we are not in possession of
11 any new materials currently. The only issue that I'm aware of
12 right now is Mr. Cooper has requested of the government certain
13 9-1-1 recordings and Sprint reports from nonfatal incidents of
14 violence with which his client is charged.

15 We are not currently in possession of any of those
16 materials and the agents are attempting to get them.
17 Mr. Cooper and I were corresponding today. I have promised him
18 that we'll have it for him within a month; hopefully, much
19 sooner. It's just that it's about 12 or 13 incidents. It may
20 take some tracking down. Hopefully we'll get it sooner than
21 that.

22 That's the only outstanding discovery dispute of which
23 I am aware.

24 THE COURT: Okay. It doesn't even sound like --

25 MS. HELLER: It's not even a dispute.

1 MR. COOPER: Judge, if I may, I'd like to clarify.

2 THE COURT: I was about to call on Ms. Greenwood.

3 MR. COOPER: I apologize, Judge. I'll wait for the
4 issue in terms of --

5 THE COURT: Sure.

6 Just to take this in sequence, Ms. Greenwood, let me
7 just ask you -- I've received a report from Ms. Greenwood that
8 summarizes from her perspective the work that she has been
9 doing recently, which includes, among other things, updating
10 the database tool that you had very helpfully prepared for
11 the use of all counsel and removing pleading defendants from
12 the lists served that the defense counsel are otherwise
13 accessing.

14 Are you aware, to begin with, of any practical issues
15 with regard to the access, including by the defendants, of the
16 voluminous discovery in the case?

17 MS. GREENWOOD: I'm not, your Honor.

18 THE COURT: Anything else you want to take this forum
19 to update counsel about?

20 MS. GREENWOOD: I don't think so. As far as I'm
21 concerned, everything's been produced, distributed, and I've
22 not heard of any problems either by counsel or by clients at
23 the MCC.

24 THE COURT: Very good.

25 Mr. Cooper, I'm turning now to the defense to raise

1 any issues. I'm interested not just in disputes or what may
2 in this case be a potential future dispute, but really also
3 I'm interested in understanding whether the defense is aware
4 of any practical problems that they, or especially their
5 clients, are encountering in accessing discovery materials.

6 MR. COOPER: Judge, I can speak only with respect to
7 my client with respect to accessing. No, we don't have any
8 problems.

9 The reason I rose before is just to sort of clarify.
10 When I made this request of Ms. Heller with respect to
11 9-1-1/Sprint, her original response to me indicated that she
12 expected to turn it all over at one time within 30 days. And
13 my request is that it should take a lot less but, regardless,
14 that it be turned over on a rolling basis. In other words,
15 instead of waiting until all of this comes together, whenever
16 the government receives any of that material, provide it to me
17 so that I can begin to review and any investigation and
18 anything further I need rather than at one time sometime the
19 end of November/beginning of December to get that.

20 THE COURT: Okay. Thank you. It doesn't sound at
21 this point like you necessarily have a difference of opinion.

22 MR. COOPER: We do, Judge, because the initial --
23 unfortunately, the response to my request is 'We'll turn it all
24 over at one time in 30 days.' So I'm not sure because when
25 Ms. Heller said hopefully we'll get it sooner, I appreciate

1 that, but I'd prefer it whenever the government got any piece
2 of material, to turn it over rather than bundling it and
3 turning it all over at one time.

4 THE COURT: Thank you, Mr. Cooper.

5 Ms. Heller, anything you want to say in response?

6 MS. HELLER: I'd say what I responded to Mr. Cooper.
7 They're requesting it as a group; I anticipate they'll get
8 everything in one bunch and that's how we anticipate turning it
9 over.

10 THE COURT: I guess the hypothetical is in the event
11 you get it in dribs and drabs, will you hold back what you get
12 first until everything is in or will you turn it over on a
13 rolling basis?

14 MS. HELLER: I don't know, your Honor. We'll do our
15 best to turn it over as efficiently as possible.

16 THE COURT: Look, Mr. Cooper, I think it's not at this
17 stage sensible for me to micromanage that sort of a schedule.
18 I think Ms. Heller understands if the government is able to
19 manageably get it in parcels to you, they will do so. But if
20 we need to take this up further, we'll do it at the conference
21 for your group of defendants.

22 MR. COOPER: That's fine, Judge.

23 THE COURT: Any other defense counsel want to raise
24 any discovery issues?

25 Okay. I'm taking from that implicitly that none of

1 you are hearing of problems that your clients at the MDC, for
2 example, are having accessing discovery materials. I'm glad to
3 hear that.

4 The next issue I have on my agenda is the capital
5 review process. Again, a little built of an update. On July
6 15, 2013, after the last conferences, I issued an order that
7 set February 3rd, 2014 as the final deadline for defendants to
8 make mitigation submissions. That was the date that a number
9 of defense counsel at the July conferences asked me to set.

10 However, my order also noted that the longer it took
11 for a defendant to make a mitigation submission, the longer it
12 might take for the Attorney General to decide whether to pursue
13 the death penalty as to that defendant.

14 And so my order also directed that any defense counsel
15 who intended to make a mitigation submission after November
16 1st, 2013, submit by November 1st, 2013 a sworn declaration to
17 the Court attesting -- and I quote from my order -- "that his
18 or her client is aware of the potential impact on the trial
19 schedule of making a mitigation submission after that date and
20 approves of the decision to do so."

21 For the record, today is November 1st, 2013. It is
22 about 2:30 in the afternoon and I have not yet received any
23 sworn declarations from defense counsel.

24 Turning, first, to the government on this point, your
25 letter of October 24th identified 11 defendants who are capital

1 eligible as to whom the Attorney General has not rendered a
2 decision whether to seek the death penalty. For the benefit of
3 the defendants, those are Felix Lopez-Cabrera, Carlos Lopez,
4 Luis Beltran, Miguel Strong, Ramon Lizardi, Javier Beltran,
5 Michael Cabrera, Yandel Silverio, Raymond Sosa, Manuel Geraldo
6 and Jugo Cespedes.

7 Your letter to me represented that the government had
8 as of that date, October 24th, received mitigation submissions
9 only as to Lizardi and Geraldo.

10 Since October 24th, has the government received any
11 mitigation submissions?

12 MS. HELLER: Yes, your Honor. Today we received a
13 submission for Mr. Cespedes making for a total of three.

14 THE COURT: So there are eight as to whom no
15 mitigation submission has been made.

16 MS. HELLER: That's correct.

17 THE COURT: Since October 24th, 2013, is there any
18 further word from the Attorney General?

19 MS. HELLER: No, your Honor, just that we are planning
20 on making our global submission shortly, within the month.

21 THE COURT: Right. And just as to that-- first of
22 all, I want to commend you for that. I think that was very
23 welcome news.

24 For the record, for everyone else here, the
25 government's letter of October the 24th represented that in

1 order to expedite the capital review process, the government
2 was preparing a global submission which it intended to submit
3 to the Justice Department in November and that it expected, if
4 events took their ordinary course, a response in 12 to 16 weeks
5 after receiving that submission.

6 And I take it, Ms. Heller, that that submission would
7 put the Attorney General in position, at least potentially, to
8 make a decision as to all those defendants even if some of
9 them did not take the opportunity to make a mitigation
10 submission?

11 MS. HELLER: That is correct, your Honor. And if we
12 do receive additional mitigation submissions after the global
13 submission, we'll forward them down to the capital committee
14 for review.

15 THE COURT: Okay. Thank you for doing that. I
16 think that will help expedite things here. It's much
17 appreciated.

18 Let me ask the government, is there any additional
19 information to share at this point that you haven't already
20 done in your October 24 letter about the state of the capital
21 review process?

22 MS. HELLER: No, your Honor.

23 THE COURT: Okay. So turning to the defense, we have
24 eight defendants who as of today have not yet made mitigation
25 submissions or, alternatively, submitted to me a sworn

1 declaration explaining that your client is aware of the
2 implications of submitting a mitigation submission after the
3 deadline that-- after the November 1st date.

4 Let me ask those counsel what your intentions are. Do
5 you intend to submit a mitigation submission? If so, am I
6 going to be receiving that sworn declaration today?

7 MS. STERNHEIM: Your Honor, Bobbi Sternheim on behalf
8 of Mr. Sosa. You will be receiving that declaration and
9 hopefully it will be to your chambers this afternoon.

10 THE COURT: Very good.

11 MS. STERNHEIM: I would just request if the marshals
12 could keep Mr. Sosa afterwards and we will have him sign them.
13 We are preparing to make a submission, but it will be later.
14 This has been explained to Mr. Sosa.

15 THE COURT: That's fine. As I indicated in the order,
16 it's perfectly fine for a submission to be made up through
17 February the 3rd. I just want to make sure that your client is
18 aware of the consequences of the timing that you've chosen to
19 make that submission on.

20 MS. STERNHEIM: Thank you.

21 THE COURT: Thank you.

22 Other counsel on that list? Okay.

23 MR. SCHNEIDER: Jeremy Schneider for Javier Beltran.
24 My partner and co-counsel do intend to make a submission, of
25 course depending on what the government says in their global

1 presentation. But we are prepared with the February date to
2 abide by the February date. I do have --

3 THE COURT: Wait a minute. You're not going to be
4 receiving the government's global submission. So your decision
5 whether to make a mitigation submission is presumably not
6 conditioned on what the government privately recommends to the
7 Attorney General.

8 MR. SCHNEIDER: No, I understand that, but I guess
9 it's possible if they make a global recommendation soon, the
10 DC may have an answer before February. That's possible,
11 right?

12 THE COURT: Okay.

13 MR. SCHNEIDER: So separate and apart from that, I
14 have now a declaration signed by David ^Stermin (ph), my
15 co-counsel. I can give it to you now or file it on ECF. So we
16 do have that declaration prepared and Mr. Beltran has been
17 advised of the consequences of the February mitigation.

18 THE COURT: Fine. I just want to make sure-- that's
19 fine. I just want to make sure we are receiving that
20 recommendation. You can do it on ECF.

21 Other defense counsel that is in the back.

22 MS. MARCUS: Susan Marcus for Michael Cabrera. And we
23 will be submitting a mitigation submission by the February
24 deadline. We will be submitting an affidavit to your Honor by
25 this afternoon.

1 THE COURT: Very good. Thank you.

2 In the back behind you.

3 MR. HERMAN: Carl Herman for Felix Lopez-Cabrera. We
4 had some discovery issues which have gotten resolved this week.
5 Our mitigation submission is in the works so it will be
6 submitted shortly. I would say within a couple of weeks,
7 Judge. And we will get -- if your Honor thinks it's
8 appropriate, we'll get the certification to your Honor.

9 THE COURT: Please get me the declaration. I set
10 today's deadline for a reason. It's really just a way of
11 making sure that, given how long the case has been here, the
12 defendants are aware of the speedy trial consequences, the
13 delay consequences of the timing of such a submission. So
14 please do get me that.

15 MR. HERMAN: Yes, sir.

16 THE COURT: Again, that's for Mr. Lopez-Cabrera?

17 MR. HERMAN: Yes, sir.

18 THE COURT: Other defense counsel?

19 MS. KELLMAN: Susan Kellman for Carlos Lopez. Your
20 Honor, with respect to Mr. Lopez, we are busily working on his
21 mitigation submission. We've had a couple of delays, but we've
22 been working very closely with Mr. Lopez in an effort to try to
23 move up some of the obstacles that we've encountered. We do
24 expect to submit a declaration to the Court this afternoon.

25 THE COURT: Perfect. Thank you.

1 MS. KELLMAN: We've been speaking regularly with
2 Mr. Lopez about the delays we've had and he's been very helpful
3 in trying to move it along.

4 THE COURT: Great. Glad to hear it.

5 Anyone else?

6 MR. NKRUMAH: Your Honor, Karahni Nkrumah on behalf of
7 Miguel Strong and Mr. Joshua ^Draytel is the capital counsel,
8 learned counsel.

9 We were unable to submit-- we were unable to make our
10 submission due to delays in interviewing Mr. Strong. We should
11 have that submission submitted by the end of this month. And I
12 will have the letter to the Court, if the Court will allow me
13 some leeway, to have the letter to the Court by Monday.

14 THE COURT: Very good. Thank you.

15 Anyone else? All right. I have not heard from, but
16 they may not be here, counsel for Luis Beltran.

17 MR. COOPER: I believe he's in the next group, your
18 Honor.

19 THE COURT: Ramon Lizardi is Mr. Neufeld.

20 MR. NEUFELD: We submitted it, your Honor.

21 THE COURT: You're submitted. Okay. Very good.

22 Mr. Silverio is Mr. Greenfield.

23 MS. BRAIN: Julie brain, your Honor. Good afternoon.
24 We'll have a declaration to your Honor's chambers by the end of
25 the day.

1 THE COURT: Very good. Thank you.

2 Mr. Geraldo is the next conference.

3 And Mr. Cespedes?

4 MS. HELLER: He submitted today, your Honor.

5 THE COURT: Very good. Thank you.

6 All right. The next issue, and I think the most
7 important one for today, involves setting trial configurations
8 and schedules. Again, just with respect to the one group of
9 murder defendants, I have set down for trial date defendants
10 Carlos Urena, Juan Franco and Limet Vasquez. That trial
11 begins March 10th. And I said in the order in which I set that
12 date that I would set out my reasons for doing so.

13 Here they are: I did so because those three
14 defendants had specifically requested a trial date; because the
15 capital review process as to those three defendants was
16 complete; and because the ^Phillips murder, in which they are
17 all said to have been responsible, supplied a valid basis for
18 joining those three defendants together. That is, of course,
19 without prejudice for the right of any of those three
20 defendants to seek a severance.

21 I carefully considered the government's alternative
22 suggestion that those three defendants be joined with a group
23 of others, specifically those implicated in the murder of
24 ^Miguel Perez. I thought that was also a plausible trial
25 management approach, but on balance I chose solely to have the

1 March 10th group be of the three defendants for this reason:

2 First, it does not appear that combining the two trials would
3 reduce -- let alone materially -- the aggregate length of the
4 two trials. Instead, it would appear to force in effect twice
5 as many defense counsel and twice as many defendants to sit for
6 a joint trial that would be approximately twice as long as
7 either of the separate trials. In other words, one two-month
8 trial as opposed to two separate three- to four-week trials.
9 Therefore, that seemed to impose a substantial burden on a
10 large number of people that could be avoided by keeping the two
11 trials separate.

12 Second, a two-month trial as opposed to separate
13 three- to four-week trials would complicate the process of
14 getting jurors, which is considerably easier to do in
15 connection with a three- to four-week trial.

16 Third, a seven-defendant trial -- which, again, might
17 have been narrowed assuming some pleas -- but a seven-defendant
18 trial was potentially more unwieldly and would have made it
19 more difficult for the jury to focus on the guilt or innocence
20 as to any individual defendant than is the situation provided
21 by a three- or four-defendant trial.

22 Finally, I would note that one of the defendants
23 implicated in the Perez murder, Mr. Lizardi, is still subject
24 to the capital review process. I did not want that process to
25 delay any further getting defendants Urena, Franco and Vasquez

1 to trial. Those are my reasons for setting the trial on that
2 day as I did.

3 Now, as for the defendants, the three set for trial on
4 March 10th, I'd like to set a next trial date for those three
5 defendants. I'd like to do so in the next two weeks. And at
6 that conference I am hoping to get from counsel a preview of
7 any defense motions I would expect to receive. And I will also
8 use that conference to set all the dates we need leading up to
9 the March 10th trial as well as making myself available to hear
10 any issues that counsel for those three defendants or the
11 government would like to raise.

12 Let me just throw out a date and see if counsel are
13 all available. Again, we're just looking for the three defense
14 counsel and the government.

15 November 12th at 10 a.m. Any problem with that,
16 Mr. Cooper?

17 MR. COOPER: I do, Judge, unfortunately.

18 THE COURT: November 13th at 10 a.m.

19 MR. COOPER: That's okay as far as I'm concerned.

20 THE COURT: Okay. How about you Cohn?

21 MR. COHN: I'm fine.

22 THE COURT: Then we have -- Mr. Buchwald is not here.
23 So Mr. Glazer.

24 MR. GLAZER: Yes, Judge, I do have a conflict. I have
25 a Miranda hearing in a homicide state case in New Jersey that's

1 been put down about a month ago.

2 THE COURT: How about Friday, November 15th at 11:30
3 a.m.

4 MR. COOPER: I can do that, too, Judge.

5 MR. GLAZER: That works for me.

6 MR. COHN: I'm okay.

7 THE COURT: Government?

8 MS. HELLER: Yes, I can do that, Judge.

9 THE COURT: Very good. I'm going to set a
10 conference down for those three defendants for November 15th at
11 1130 a.m.

12 All right. Turning then to the ensuing trials after
13 the March 10th trial, in my order of October 18, I directed the
14 government to propose trial configurations of defendants and a
15 logical sequencing of those trials. The government did so in
16 its letter of October 24th. I found that letter extremely
17 thoughtful and helpful.

18 In my order of October 18th, I invited defense counsel
19 to comment in writing on the government's proposals and to do
20 so by Wednesday, October 30th. I also directed any defense
21 counsel who is now seeking the setting of a trial date for his
22 or her client to do so in writing also by Wednesday, October
23 30th. In response I did not receive any letters, any such
24 submissions by the defense.

25 In light of that, let me tell you what my present

1 intention is so as to solicit any feedback before I commit with
2 finality to such a schedule.

3 First of all, I intend next week to set a trial
4 schedule for the remaining defendants in this case broken out
5 into different configurations. Setting trial dates now, I have
6 determined, is wise. It helps assure a speedy trial, even
7 though very few defendants -- indeed, just one defendant, other
8 than the three set for trial on March 10th, that's Maria
9 Mejia -- have at any point asked for such a trial. I have an
10 independent obligation to make sure that the speedy trial
11 interests of the defendants are respected. The sooner I set a
12 case down for trial, the sooner the trial will happen.

13 In addition, there are a lot of defendants and counsel
14 here and a lot of schedules to accommodate. For planning
15 purposes, setting trial dates now, well in advance, which
16 counsel must thereafter respect, helps guard against delay and
17 scheduling conflicts.

18 And I would note that although no defense counsel
19 wrote me in response to my October 18th order, nor did any
20 counsel, government nor defense, ask me not to set a trial
21 date. My intention is to set configurations for trial
22 consistent with configurations the government has proposed.
23 The configurations at first blush without any joinder having
24 been made are logical. There appear to be logical connections
25 justifying joinder of the defendants into the groups that the

1 government proposes to try together and the lengths of the
2 trials that the government envisions are manageable ones.

3 In so doing, I am, of course, entirely open to hearing
4 down the road arguments for severance. And if there is a
5 persuasive meritorious argument for severance of a particular
6 defendant, I will grant it. We will figure out when and if
7 that point comes whether such a defendant whose case is severed
8 is there to be tried alone or to then be joined in a different
9 group of defendants. But for the time being, I'm going to use
10 the configurations that the government has proposed.

11 I also am mindful that if the capital review process
12 results in a decision by the Attorney General to seek the death
13 penalty against a particular defendant, I will likely need to
14 revise the schedule, at least presumably as to that defendant.
15 We will cross that bridge when and if we need to.

16 My premise in setting the schedule is that capital
17 charges will not be pursued. Of course in acting on that
18 premise, I'm not expressing a view as to the proper outcome of
19 the decision that will be before the Attorney General. I'm
20 merely trying to set a rational schedule based on what I think
21 to be a fair assumption.

22 Now, as to the sequencing of the trials, I expect to
23 set them in the sequence proposed by the government with one
24 exception. I expect to set the trial that the government
25 identifies as proposed trial three -- meaning involving one

1 defendant, Julian Lopez -- ahead of the trial that the
2 government identifies as proposed trial two, involving four
3 defendants: Maria Mejia, Lenin Morel, Ramon Lizardi and Miguel
4 Delance.

5 The Lopez trial is focused on the murder of ^Isse
6 Dominguez. And specifically I am expecting to set that Lopez
7 trial down for the spring, probably in May, so as to create
8 some space for counsel after the conclusion of the trial
9 beginning March 10th.

10 I'm doing that for several independent reasons:
11 First, Julian Lopez is not subject to the capital review
12 process. Therefore, that process will not and cannot
13 complicate the scheduling of his trial date.

14 By contrast, one of the four defendants in what the
15 government identified as proposed trial two, Mr. Lizardi, is
16 subject to the capital review process, which the government
17 forecasts may not run its course until some 12 to 16 weeks
18 after the government's anticipated submission to the Attorney
19 General in November. It's certainly entirely possible,
20 therefore, that that process would run its course giving well
21 enough time for a trial in this schedule the government
22 forecast, but we can't be sure of that.

23 Second, as a matter of scheduling, the Lopez trial is
24 shorter and is a better fit for this Court's existing schedule
25 in the spring. I instead, therefore, intend to set the trial

1 of defendants Maria Mejia, Morel, Lizardi and Delance for, in
2 all likelihood, early July, creating again some space for the
3 May and July trials. The July trial the government has
4 estimated will last three to four weeks, and the government has
5 asked that there be a good three weeks between the close of one
6 trial and the start of another. And this would seem to assure
7 that.

8 As to the government's proposed trial number four of
9 nine defendants, I expect to set that down as the government
10 has proposed in September of 2014. For the record, for the
11 benefit of the defendants who are here, those nine defendants
12 are Felix Lopez-Cabrera, Luis Beltran, Javier Beltran, Michael
13 Cabrera, Miguel Strong, Yandel Silverio, Carlos Lopez, Andry
14 Lazala and Raymond Sosa.

15 The government expects that trial to last between two
16 and three months. It would be focused on the murders of ^Ramon
17 Casul, David ^Vila Gomez, Irving Cruz, ^Raffe Devarez and
18 Freddie Polanco, among other charged offenses. A September
19 trial date will give plenty of time for the capital review
20 process to run its course for those among those nine defendants
21 who are subject to that process.

22 As I've stated a number of times, my preference is not
23 to have joint trials involving more than approximately five
24 defendants at once. However, that trial is ten months away or
25 more. For now it is reasonable to set all nine defendants down

1 for trial on that date on the assumption, which is very well
2 grounded in experience so far in this case, that not all nine
3 defendants will ultimately go to trial. In the event that
4 happens, contrary to my expectations, I can then decide whether
5 and how to proceed including whether to break off some of those
6 defendants so as to create a more manageable universe of
7 defendants to be tried at one time.

8 Finally, I expect to set down the proposed trial five
9 for January 2015, again as the government has proposed. That
10 trial involves five defendants: Raymond Sosa, Hargelis Vargas,
11 Manuel Geraldo, Anderson Abreu and Jugo Cespedes. It is
12 focused on the murder of Orlando ^Celegado, among other charged
13 defenses.

14 Under these configurations, only one defendant,
15 Raymond Sosa, would be tried twice which, frankly, given the
16 number of defendants here and overlapping charges, is actually
17 quite an efficient outcome in my estimation. The government
18 has stated that in advance of the fourth and fifth trials, it
19 would clearly delineate which of Mr. Sosa's charged defenses it
20 would attempt to prove in each trial. That would clearly be
21 necessary.

22 With that preview of what my intentions are, but my
23 not having committed to specific dates, let me ask the defense
24 now, I've already received the government's view in the October
25 24th letter, whether the defense has any views on this.

1 MS. STERNHEIM: Your Honor, Bobbi Sternheim on behalf
2 of Raymond Sosa. I apologize to the Court. I had been
3 traveling on case-related business and did not see your request
4 for a submission; therefore, I did not. But I do have issues
5 with regard to the trial dates that may be resolved.

6 I am waiting for Judge Kaplan to determine whether a
7 third defendant would be joined to a case that is supposed to
8 begin in April. If the third defendant is joined, in all
9 likelihood that trial will be pushed to the fall of 2014 and
10 I would not be available, though Chris Adams would be
11 available.

12 THE COURT: Mr. Adams would be available in this trial
13 you mean?

14 MS. STERNHEIM: Yes.

15 THE COURT: Okay.

16 MS. STERNHEIM: So I don't know if I would be
17 available for the January trial either, though Mr. Adams would
18 be available. I would say, however, since Mr. Sosa is the only
19 defendant who is involved in two cases and the fact that one
20 may last as much as three months, I would request that the
21 second trial not start until at least February to give counsel
22 enough time to recoup, deal with other matters, and prepare for
23 the second trial.

24 THE COURT: All right. So you're in a unique
25 situation in as much as your client is in the two trials.

1 Look, it seems to me that-- I appreciate what you've said. In
2 as much as you have a co-counsel who is available, the
3 possibility -- which at this point is conjectural -- that you
4 would not be available, although that's regrettable, doesn't
5 seem to deprive him of the ability to be effectively
6 represented on or about the date set, correct?

7 MS. STERNHEIM: Absolutely, but as the government put
8 in its footnote, the Court may at some point wish to address
9 the status of learned counsel. And in Mr. Sosa's situation,
10 regardless of what the Court decides to do, I would ask that
11 the Court consider this an exceptional circumstance.

12 THE COURT: Well, I did not, frankly, intend to take
13 that issue up. But in any event, if I were to take up the
14 issue of whether learned counsel would remain on the case, it
15 certainly would seem to me that in the circumstance that the
16 original counsel was unavailable, that would be a compelling
17 reason to retain the learned counsel. I can't say that I
18 alerted to that issue as to one that merited my intervention.

19 MS. STERNHEIM: And I apologize for not briefing the
20 Court earlier.

21 THE COURT: All right. But then we have the second
22 issue about the trial date for Mr. Sosa, the second trial date.
23 So, in effect, if the September trial lasted on the longer end
24 of what the government estimates, let's say mid-September
25 through mid-December, your application then would be that what

1 I've called the January trial, inasmuch as it, too, involves
2 Mr. Sosa, be scheduled to give a little bit of wiggle room for
3 his smaller legal team to catch their breath.

4 MS. STERNHEIM: That's correct.

5 THE COURT: Okay. I take your point. I'm not sure it
6 will be pushed to February, but that's relevant to me in
7 deciding when in September to schedule the first trial and when
8 perhaps in January to schedule the second trial. So I thank
9 you.

10 MS. STERNHEIM: Just as another footnote to that. I
11 direct a program at a law school for the first two weeks of
12 January every year. So if the Court was inclined to set the
13 schedule, I would ask for it to be scheduled for the third week
14 in January.

15 THE COURT: Thank you. That's helpful. I'll make a
16 note of that.

17 Again, I'm not making concrete scheduling decisions
18 now. I want to hear from counsel on the second conference
19 and I want to reflect on what I've heard, but that's very
20 helpful.

21 Yes.

22 MR. NEUMAN: James Neuman for Julian Lopez. You are
23 proposing that he be tried in May. I have a trial scheduled
24 for May in the Eastern District starting early May. It's
25 supposed to go about six weeks, so I'm not available May or

1 June.

2 THE COURT: That's already a set trial date?

3 MR. NEUMAN: Yes.

4 THE COURT: When would you be available before then?

5 MR. NEUMAN: March.

6 THE COURT: What about April?

7 MR. NEUMAN: I can do April.

8 THE COURT: And are you representing Mr. Lopez by
9 yourself?

10 MR. NEUMAN: By myself.

11 THE COURT: All right. Thank you, Mr. Neuman.

12 Anyone else?

13 MR. WILFORD: Your Honor, with respect to Ms. Mejia,
14 if it's possible that Mr. Neuman, since he's solely defending,
15 and I understand the Court's consideration with respect to the
16 capital review process, but perhaps Mr. Neuman can take my spot
17 and the defendants that you intended to try in July can be
18 moved up to May. Because we all have to have that
19 consideration, having to review counsel communication with one
20 another, if we have that availability.

21 THE COURT: All right. I mean, I'm going to sort out
22 the issue presented by Mr. Neuman. We'll figure out what to do
23 about that. But the solution I don't think is going to be to
24 swap the two trials.

25 Do you have a conflict in July?

1 MR. WILFORD: No, I don't, Judge, not in terms of a
2 trial, but I do every year participate as faculty at the end of
3 July in the college and I'd like to be able to do that. The
4 government is talking about maybe a four- or five-week trial,
5 three- or four-week trial.

6 THE COURT: I think the government estimated that the
7 July trial would last --

8 MR. WELLS: The government's estimate should be for a
9 May trial because we were originally second.

10 THE COURT: Sorry. The trial I have in mind for early
11 July, what it called proposed trial two, it anticipated lasting
12 three weeks.

13 When does your conference in July begin?

14 MR. WILFORD: The last week in July, Judge.

15 THE COURT: I'll take it under advisement, but I can't
16 make any promises. A binding trial commitment with another
17 Court is something else, but I appreciate it.

18 MR. WILFORD: I understand that, Judge.

19 THE COURT: Anyone else?

20 Okay. All right. I'll take this under advisement in
21 conjunction with what I hear at the next conference.

22 Mr. Neuman, it may be that my chambers is in touch
23 with you. I plan to work through potential dates.

24 MR. NEUMAN: Very good.

25 MR. WILFORD: I'm sorry, your Honor. Perhaps if you

1 could move the trial to the last week in June, the beginning,
2 that would accommodate my situation.

3 THE COURT: All right. I'll take that under
4 advisement. Thank you.

5 MR. WILFORD: Thank you.

6 THE COURT: All right. Counsel for the government,
7 anything you want to add having heard the various comments from
8 the defense?

9 MS. HELLER: No, your Honor.

10 THE COURT: All right. The next issue to address
11 involves the working configurations going forward. Assuming
12 that I set the trials in the sequence and in the configurations
13 that I have indicated I intend to do, my expectation is that
14 the March 10th group of three defendants will henceforth
15 proceed in effect as its own case. They will have their own
16 conferences and not be part of this large group.

17 And for the purposes of conferences, I would expect to
18 do the same for Julian Lopez. It seems to me if he's heading
19 for, whenever it gets scheduled, a trial of one to two weeks
20 limited to himself, there's no reason for him to be sitting
21 through these long conferences or you, Mr. Neuman.

22 For the time being, though, my instinct is to keep the
23 other groups, the ones that I have provisionally indicated I
24 expect to set down for trials in July, September and January
25 altogether, and in all likelihood as we get somewhat closer to

1 the first of those trials, we'll break off the earliest of that
2 group into its own organism.

3 Any reason counsel can give to me not to proceed in
4 that fashion? Any reason why it makes sense to break things
5 apart now or keep glued together more defendants that I intend
6 to?

7 MS. HELLER: That's fine for the government, your
8 Honor.

9 THE COURT: Thank you.

10 MR. WILFORD: Your Honor, most respectfully, I think
11 that it may be appropriate with respect to breaking into small
12 groups, it may be more manageable and direct with respect to
13 issues related to particular defendants. Because there may be
14 some issues that would come up that we would be raising at a
15 conference of this enormity that shouldn't be raised when it's
16 something just pertaining to this group of particular finite
17 defendants.

18 THE COURT: I think your client is in the third group
19 to be tried, the one I had in mind for approximately July. I
20 would expect that, in all likelihood, after one more group
21 conference down the road, that group would, in effect, be ready
22 to be broken off and for dates specific to that group to be
23 set, whether with regard to motions or discovery issues or
24 whatnot. So I think in short order that will happen for that
25 group.

1 MR. WILFORD: Thank you.

2 THE COURT: Okay. The next issue I want to briefly
3 just acknowledge involves two pending sets of motions. One is
4 by defendant Lizardi seeking certain Brady material and other
5 discovery. The government has responded to that motion.

6 The other is from defendant Delance also seeking
7 discovery and particulars.

8 I haven't received a response from the government. My
9 expectation and preference is to resolve both of those motions
10 together. So what I am waiting on is a response from the
11 government for the Delance motion.

12 Government, how soon can you get me a response?

13 MS. HELLER: Two weeks, your Honor?

14 THE COURT: That's fine. So November 15th. Okay.

15 All right. With that I'm at the point in my agenda
16 anyway where I want to open the floor to counsel to raise
17 issues that haven't thus far come up. Anyone have anything for
18 me?

19 Okay. The record will reflect that nobody had
20 anything to offer.

21 All right. The next thing I need to do then is to set
22 a next conference for the murder defendants with the exception
23 of the March 10 defendants and Mr. Lopez. And I would propose
24 that we do that approximately three months from now, late
25 January/early February.

1 Ms. Hummel, may I have a date?

2 THE DEPUTY CLERK: Yes. One moment, please, your
3 Honor.

4 Counsel, how is Thursday, February 6th? The 6th of
5 February. It's a Thursday at 2:15.

6 MS. KELLMAN: Your Honor, I expect to be on trial in
7 February in the Eastern District. I think the judge does not
8 work on Fridays. He does his regular calendar on Friday. So
9 if it's possible to put it on a Friday.

10 THE COURT: Let's try to do it on Friday. You're
11 probably not alone in that.

12 THE DEPUTY CLERK: We can put it down for Friday,
13 February 14th.

14 THE COURT: Let's move it a little earlier,
15 Ms. Hummel. Can we try the 7th?

16 MR. COOPER: Would that be the morning of the 7th,
17 your Honor.

18 THE DEPUTY CLERK: We can put it down for 3:30 on the
19 7th of February. Counsel, Friday, February 7th at 11 and
20 12:30.

21 THE COURT: All right. Our next conference then will
22 be February 7th at 11 a.m. and at 12:30 p.m.

23 Do I have an application from the government for the
24 exclusion of time until that point?

25 MS. HELLER: Your Honor, just to clarify, is that for

1 Mr. Lopez as well?

2 THE COURT: No. What I'm going to do is once I set
3 a-- I'm going to need to set a trial date for Mr. Lopez. And
4 my chambers will be in touch with both Mr. Lopez and the
5 government to try to work out a rational date. I'm going to
6 exclude the time for everybody through February 7th just to be
7 proactive, but there will in short order be a conference with
8 counsel for Mr. Lopez and the government in which we'll get the
9 process moving forward for that case.

10 MS. HELLER: Your Honor, the government would ask the
11 Court to exclude time between today's date and February 7th in
12 order for counsel to complete their mitigation submissions, in
13 order for the death penalty process to continue, and in order
14 for the parties to begin preparing their motions and for trial.

15 THE COURT: Very good.

16 Is there any objection to that?

17 MS. KELLMAN: No, your Honor.

18 THE COURT: I'm going to exclude the time between
19 today and February 7th for a number of reasons incorporated by
20 reference, but what Ms. Heller has said. First of all, there
21 remains a lot of discovery and a lot of material for the
22 defendants to master.

23 Second, at this point we now have general trial dates
24 and within several days there will be specific trial dates for
25 each of the defendants. That, in turn, will no doubt occasion

1 ferment within the defense group as the defense group prepares
2 for conflicting trial dates. The time I'm excluding gives the
3 defense a particular opportunity to begin preparing for trials
4 with very high stakes and lots of proofs.

5 I'm also mindful that at least as to some defendants,
6 there will be motions pending. Indeed, there already are for
7 several defendants. So I'll exclude the time in the interests
8 of justice between now and February 7th.

9 I should add, of course, the capital review process is
10 underway for quite a number of the defendants in this case and
11 that independently is a very reason to exclude time. In any
12 event, the exclusion is pursuant to 3161 (h)(7)(A) with the
13 Court having found that the interests of justice outweigh the
14 interests of the defense and the public in speedy trial.

15 Anything further from the government?

16 MS. HELLER: No, your Honor.

17 THE COURT: Anything from the defense?

18 MR. COOPER: No.

19 THE COURT: Okay. Within very short order there will,
20 probably by Tuesday or so, an order from the Court which sets
21 the relevant trial dates.

22 Government, my chambers will likely be in touch with
23 you.

24 One of the issues which may arise as to the Lopez
25 trial is the viability of a trial in May which would be

1 inconsistent with your understandable preference not to have
2 trials too close or back to back. I'll ask you to give thought
3 to that because it's something that is an obvious possibility
4 here.

5 Very good. Thank you.

6 MS. HELLER: We'll be available.

7 THE COURT: We stand adjourned.

8 (Adjourned)
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